

Order

Michigan Supreme Court
Lansing, Michigan

December 29, 2010

Marilyn Kelly,
Chief Justice

ADM File No. 2009-25

Michael F. Cavanagh
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway
Alton Thomas Davis,
Justices

Amendment of Rule 8.120
of the Michigan Court Rules

On order of the Court, the order entered by the Court dated November 16, 2010, is amended as follows:

[Additions are indicated by underlining and deletions are indicated by strikeover.]

Rule 8.120. Law Students and Recent Graduates; Participation in Legal Aid Clinics, Defender Offices, and Legal Training Programs.

- (A) Legal Aid Clinics; Defender Offices. Effective legal service for each person in Michigan, regardless of that person's ability to pay, is important to the directly affected person, to our court system, and to the whole citizenry. Law students and recent law graduates, under supervision by a member of the state bar, may staff public and nonprofit defender offices and legal aid clinics that are organized under a city or county bar association or an accredited law school or for the primary purpose of providing free legal services to indigent persons.
- (B) Legal Training Programs. Law students and recent law graduates may participate in legal training programs organized in the offices of county prosecuting attorneys, county corporation counsel, city attorneys, and the Attorney General.
- (C) Eligible Students. A student in a law school approved by the American Bar Association who has received a passing grade in law school courses and has completed the first year is eligible to participate in a clinic or program listed in subrules (A) and (B) if the student meets the academic and moral standards established by the dean of that school. For the purpose of this rule, a "recent law graduate" is a person who has graduated from law school within the last year. The student or graduate must certify in writing that he or she has read and is familiar with the Michigan Rules of Professional Conduct and the Michigan Court Rules, and shall take an oath which is reasonably equivalent to the Michigan Lawyer's Oath in requiring at a minimum the promise to: (a) support the Constitution of the United States; (b) support the Constitution of the State of Michigan; (c) maintain the respect due to courts of justice and judicial officers; (d) never seek to mislead a judge or jury by any artifice or false statement of fact or law; (e) maintain the

confidence and preserve inviolate the secrets of the client; (f) abstain from all offensive personality; (g) advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause; and (h) in all other respects conduct himself or herself personally and professionally in conformity with the high standards of conduct imposed upon members of the state bar of Michigan.

(D) Scope; Procedure.

- (1) A member of the legal aid clinic, in representing an indigent person, is authorized to advise the person and to negotiate and appear on the person's behalf in all Michigan courts except the Supreme Court. Except as otherwise provided in this rule, the ~~The~~ indigent person that will be assisted by the student must consent in writing to the representation. In a situation in which a law student provides short-term, limited-scope legal advice by telephone in the context of a clinical program intended to assist indigent persons offered as part of a law school curriculum, the clinic patron shall be informed that:
 - (a) the advice provided may be rendered by a law student, and
 - (b) by proceeding to the consultation following notification that the advice may be provided by a law student, the clinic patron consents to such representation.
- (2) Representation must be conducted under the supervision of a state bar member. Supervision by a state bar member includes the duty to examine and sign all pleadings filed. It does not require the state bar member to be present
 - (a) while a law student or graduate is advising an indigent person or negotiating on the person's behalf, or
 - (b) during a courtroom appearance of a law student or graduate, except
 - (i) during an appellate argument or
 - (ii) in a criminal or juvenile case exposing the client to a penalty of imprisonment.

The supervising attorney shall assume all personal professional responsibility for the student's or graduate's work, and should consider purchasing professional liability insurance to cover the practice of such student or graduate.

- (3) A law student or graduate may not appear in a case in a Michigan court without the approval of the judge or a majority of the panel of judges to which the case is assigned. If the judge or a majority of the panel grants approval, the judge or a majority of the panel may suspend the proceedings at any stage if the judge or a majority of the panel determines that the representation by the law student or graduate
- (a) is professionally inadequate, and
 - (b) substantial justice requires suspension.

In the Court of Appeals, a request for a law student or graduate to appear at oral argument must be submitted by motion to the panel that will hear the case. The panel may deny the request or establish restrictions or other parameters for the representation on a case-by-case basis.

- (4) A law student or graduate serving in a prosecutor's, county corporation counsel's, city attorney's, or Attorney General's program may be authorized to perform comparable functions and duties assigned by the prosecuting attorney, county attorney, city attorney, or Attorney General, except that
- (a) the law student or graduate is subject to the conditions and restrictions of this rule; and
 - (b) the law student or graduate may not be appointed as an assistant prosecutor, assistant corporation counsel, assistant city attorney, or assistant Attorney General.

Staff Comment: The amendment of MCR 8.120 further revises the order that was dated November 16, 2010 (effective January 1, 2011), by providing that clinic patrons must be informed that if they are seeking advice as part of a short-term "hotline-type" situation, it may be a law student providing the counsel, and that by proceeding to the consultation following that notification, the clinic patron consents to such representation.

The staff comment is not an authoritative construction by the Court.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 29, 2010

Corbin R. Davis

Clerk